IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 128 of 1988

with

CIVIL APPLICATION NO.10773 of 2001
in
SECOND APPEAL No.128 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

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HEIRS OF RAJKUMAR BODARAM PURASWAMI
Versus
STATE OF GUJARAT

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Appearance:
1. Second Appeal No. 128 of 1988
MR MUKESH A PATEL for Petitioners No. 1-1/2
MR BY MANKAD, AGP for Respondent No. 1
MR PK JANI for Respondent No. 2

2. Civil Applicatio No.100773 of 2001 in S.A.128/88
MR PK JANI for Applicant
MR MUKESH A PATEL for Respondent No.1-2
MR BY MANKAD, AGP for Respondent No.3

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CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 24/07/2002

C.A.V. JUDGEMENT

1. Bodaram Samaldas Puraswami and others, the appellants have filed this second appeal under Section 100 of the Code of Civil Procedure, 1976, against the judgment and decree dated 9th February, 1988, passed by the learned District Judge, Mehsana, in Regular Civil Appeal No.230 of 1982. The learned District Judge by his impugned judgment and decree pleased to allow the appeal and set aside the judgment and decree dated 30th April, 1982 passed by learned Civil Judge (S.D.), Mehsana in Regular Civil Suit No.35 of 1975 filed by the plaintiff appellants herein.

2. The facts giving rise to the Second Appeal are as under:-

2.1 There is a land ad-measuring 26138 sq.yd. out of Survey no.37 of sim of Mahesana Town. The Collector Mehsana vide his order dated 13.11.1962 granted the said land in favour of Sindhinagar Co-operative Housing Society, Mehsana (hereinafter referred to as `the society'). Thereafter the said society after having got lay out plan and the map prepared for the purpose of construction got sanction it from Government and has constructed buildings thereon.

2.2 It is alleged that they are in possession and enjoyment of the said houses. Thereafter in 1972 the society wanted to construct community hall in place of community center and society wanted to amalgamate 20' wide land on three sides of the plot with the adjoining plot holders and for that purpose revised plan was submitted to the District Magistrate, Mahesana by the society. Thereafter society's revised plan was sanctioned with the consultation of the Consulting Surveyor, and as per the order of the Collector, Mahesana, land N.A.3445 dated 9.11.72 said revised plan was sanctioned. As per said sanctioned plan, society handed over possession of 20' wide and adjoining to the plot holders to the respective plot holders. On the southern side of the society, plaintiff's bungalow lands were there and society handed over said land to the plaintiffs.

2.2(A) It has been further stated that in the said land at the plaintiff's costs and with the consent of the society and Mahesana Municipality, plaintiff constructed a compound wall but before that Guru Nanak Society had

filed Regular Civil Suit against Sindhi Society which being Regular Civil suit No.210/73 and objected to said construction of the wall stating therein that it is a road land.

2.3 Thereafter they passed purshis in the said suit and stated that as there is 15' wide road between Sindhinagar Society and Peon's Society which is lying open belonging to the Government, said land be kept open. The plot holders of Sindhi society can construct over their own land and they had no objection to this arrangement. In the said purshis it was also stated that the Government road does not pass through the land belonging to Sindhi Society and by passing such purshis plaintiffs of that suit withdrew suit.

2.4 Pursuant to the order of the District Collector, Mahesana, dated 9th November, 1972, the plaintiffs in their own land with the permission of Mahesana Municipality on the southern side of the plaintiffs' plot at their own costs and expenses in the open 20' width land constructed a wall. Thereafter, Gurukul Society and Gurunanak Society filed an application under Section 211 of the Bombay Land Revenue Code (hereinafter referred to as `the Code') against the Collector's order Land N.A. 3445.

2.5 Against the aforesaid order of the Collector, a revision application was filed before Special Secretary, Revenue Department, Ahmedabad on 24.11.73. The Government dismissed the said revision application and upheld the order of the District Collector, Mahesana, for implementation of the revised plan.

2.6 It has been further stated that as per the aforesaid decision, there is open piece of land 15' in between Sindhi Society and Peon's Houses and there is no other land open for the purpose of public road. Still, however, the Collector, Mahesana by his order dated 4.5.74 ordered that 30' width road land is ordered to be vested in Mahesana Town Municipality.

2.7 Being aggrieved and dissatisfied with the said action, plaintiff filed a suit for declaration that that the said order of District Collector is illegal, unjust and against the principles of natural justice.

3. The defendant No.1 - State of Gujarat filed its reply at Exh.23 resisted the suit and contended as under:

3.1 It was stated that as a matter of fact the

Government land ad-measuring 26138 sq.yards out of Survey No.37 was granted to the plaintiffs' society for the purpose of constructing houses for its members. The said plot was approved by the Government under Collector's office order dated 13.11.1962.

3.2 The society thereafter after getting the lay out plans for construction of houses for its members sanctioned by the Government, constructed houses on the said land. However, since the society wanted to construct a community centre/hall on a portion of the said land granted to it, it had submitted revised plans. In this plan the road of 20' wide on three sides of the pot granted to the society was deleted and that area was amalgameted with the adjoining plots. This new revised plan was approved by the Collector, Mahesana in consultation with the Dy. Asstt. Consulting Surveyor to Government under his office order dated 9.11.72 with certain conditions laid down in it.

3.3 It was further submitted that against this order, the Gurukul Co-operative Housing Society and Gurunanak Co-operative Housing Society of Mahesana had filed a revision application in the Court of Special Secretary to Government, Revenue Department, who has rejected this application vide order dated 25.4.74.

3.4 In the meantime, the Gurukul Co-operative Housing Society represented that the Sindhi Co-operative Housing Society was constructing wall in the road and has stopped the road which is used by the residents of Gurukul Co-operative Housing Society. This issue was inquired into and Sindhi Co-operative Housing Society was served with a notice on 7.1.74 to stop the construction work of a compound wall as the same was against the provisions of condition No.2 of the order dated 9.11.72 sanctioning the revised plan of Sindhi Co-operative Housing Society.

3.5 Thereafter Gurukul Co-operative Housing Society again represented that the peons working in different Government offices who have been granted plots out of Revenue S.No.37 have also constructed one wall on their side and thereby they have also stopped the road used by the inhabitants and Gurukul and Gurunanak Co-operative Housing Societies. This wall was got removed after visiting the site personally by the Collector, Mahesana and it was ordered under this office Order dated 4.5.74 to vest the 30' wide road between Sindhi Co-operative Housing Society and the plots granted to the peons out of S.No.37 in Mahesana Municipality. The Mamlatdar, Mahesana was also directed in this order to hand over the

possession of this 30' wide road to the Municipality.

3.6 Being aggrieved and dissatisfied with the aforesaid decision, the plaintiff filed Civil Suit No.148/74 and 147/74 in the Court of learned Civil Judge (S.D.) Mahesana. The residents of Gurukul Co-operative Housing Society again on 22.7.74 presented one application to the Collector, Mahesana saying that the road between Sindhi Co-operative Housing Society and the plots of peons is blocked by Sindhi Co-operative Housing Society by erecting one hedge. Plaintiff society has therefore been directed on 26.7.74 to open 30' wide road immediately pending decision of the issue in question.

3.7 The State of Gujarat therefore submitted that a strip of land measuring 30' wide was kept open between the land granted to Sindhi Society and the peons out of S.No.37. This strip of 30' being used as road by the nearly societies vide the order of the Collector, Mahesana dated 4.5.74 to vest in Mahesana Municipality. This strip of land is not granted to anybody and hence nobody can claim their right over it. The order of the Collector, Mahesana dated 4.5.74 is, therefore, legal one.

3.8 It was submitted that plaintiffs have illegally and unauthorisedly constructed the said wall, which is liable to be removed. It was submitted that it is not admitted that the plaintiffs would suffer irreparable loss if an order of injunction is vacated and, therefore, the suit of the plaintiffs be decreed in this behalf.

4. The defendant no.2 Mahesana Municipality also filed reply vide Ex.26 and resisted the plaintiffs' suit as under:

4.1 It was submitted that the District Collector, Mahesana by his order dated 4.5.74 ordered that 15' from Sindhi Society and 15' from peons' society and making an aggregate wall, of 30' and thereby vested 30' wide road in Mahesana Municipality. This order was passed in view of the special conditions attached to the earlier order of the Collector and it was ordered that the said width of 30' road be handed over to the Mahesana Municipality. From that day the Municipality is lawfully in possession of the suit land in this behalf. It was submitted that the plaintiffs have no right, title or interest over the said plot and hence plaintiff suit is liable to be dismissed in this behalf.

4.2 It was further submitted that the plaintiffs have

constructed wall illegally without permission and, therefore, for demolishing said wall and as per statutory powers of the Municipality and therefore it is not required that a notice be issued against the present plaintiff and there is no question of following procedure of natural justice. It is not admitted that the said order is unjust and illegal.

4.3 It was also submitted that plaintiffs' society passed a resolution to hand over the said land and said resolution was passed on 17.1.75 and, therefore, the plaintiffs have no right, title or interest in the said 20' width land and hence plaintiffs' suit is liable to be dismissed.

5. After the oral and documentary evidence led by the parties, the learned Civil Judge (S.D.), Mahesana, by his judgment and decree dated 30.4.82 pleased to hold that the order of the Collector dated 4.5.74 is not legal and valid. The learned trial Judge also held that the plaintiffs proved that the land of 15' wide out of road of 30' proposed by the Collector and have encroached the same by a compound wall without the permission of Mahesana Municipality. The learned trial Judge further held that the Collector cannot order that the land to be taken away from the plaintiffs and can order it to be vested in Mahesana Municipality. The trial Court further held that the land cannot be ordered to be resumed without due process for acquisition of land and therefore the trial Court held that the Collector's order was declared to be illegal and invalid. The trial Court therefore granted permanent injunction and held that plaintiff had no right to file suit an suit notice to the Municipality is legal and valid in this behalf.

6. Being aggrieved and dissatisfied with the aforesaid judgment and decree, the State of Gujarat filed appeal being Regular Civil Appeal No.230 of 1982 before the learned District Judge, Mahesana. The learned Appellate Judge by his judgment and decree dated 9th February, 1988, pleased to allow the appeal and pleased to quash and set aside the judgment and decree passed by the trial Court. The learned Appellate judge held that plaintiff failed to prove that the Collector's order dated 4.5.74 is illegal, unjust and invalid. In para 21 of his judgment, the learned District Judge has recorded the following findings:

(1) That the order dated 4.5.1974 passed by the Collector, Mahesana is legal and valid.

(2) That the appellants-plainiffs have no right over the strip of land over which they have unauthorisedly put up compound wall notwithstanding the fact that a condition was imposed in the order sanctioning the revised plan that the strip of land would be required to be kept open to sky;

(3) That the society had accepted the order passed by the Collector, Mahesana on 4.5.1974 and had also passed a resolution to that effect at a meeting of its general body which was also attended by the appellants.

(4) That the suit of the appellants was required to be dismissed on that ground alone.

(5) That the learned trial Judge has committed an error in proceeding to decree the suit of the appellants on the basis of an assumption that the appellants were the owners of the suit strip of land and that the Collector had re-acquired the said strip of land without paying any compensation to the appellants.

(6) That on the contrary, the original order of grant of the land to Sindhi Society contemplated that the Collector shall resume any portion of the said land if required for the purpose of laying or widening a road, without paying any compensation whatsoever;

(7) That the said conditions were kept intact while sanctioning the revised plans submitted by the society.

(8) That in that view of the matter, the appellants were not entitled to be heard before passing any order of resumption of the said land by the Collector.

(9) That it is the society which was allotted/granted the said strip of land; and the society had passed a resolution

accepting the order of the Collector to vest the said strip of land in the municipality.

(10) That there is no breach of principles of natural justice as contended by the appellants.

7. Being aggrieved and dissatisfied with the said judgment and decree of the learned Appellate Judge, the appellants have filed Second Appeal before this Court raising two substantial questions of law which reads as under:

(1) Whether the lower appellate court committed substantial error of law in holding that the suit filed before the Civil Court without exhausting the remedy provided under Land Revenue Code is barred under the Revenue jurisdiction?

(2) Whether the lower appellate court committed substantial error of law in holding that the Collector can order land to be taken away from the plaintiffs and can order to be handed over to the Municipality as part of the public street without acquiring the same?

8. Learned advocate for the appellants submitted that the Collector has passed the order on 4.5.74 however before passing the order the society was not heard. It was submitted that without hearing the society the said order held that 30' land for the road vest in the Municipality. It is pertinent to note that no procedure under Land Acquisition Act and under the provisions of any other law followed and no notice whatsoever to that effect were issued to the appellant though the appellant was occupier and the owner of the land in question as on the date of passing the order.

8.1 Mr.Mukesh Patel, learned advocate for the appellants states and submits that the society had passed the resolution to apply for allotment of land before the government and the society had applied before the Government for allotment of the land on 13.11.56 for housing purpose. It is submitted that on the basis of application made by the society the Government/Collector had allotted the land of Survey No.37 of the sim of Mehsana town ad-measuring 25,509 sq.yds (5 Acre 10

Gunthas and 99 Yards) on 22.1.60. It is submitted that thereafter the said order was revised by way of final order in the year 1962 and the land allotted to the society was amended at ad-measuring 26,138 sq.yd. and the said order came to be passed on 28.2.62 (Exh.104). The plans were approved by the competent authorities on 28.2.62 (Exh.102). It is submitted that the application to the Collector was made by the society on 11.3.72 seeking permission to allot the said land originally shown as society road to the members. The appellant had become the member and allottee of the plot No.24 and 33 as well the additional land. The said resolution was passed and all respective members having adjacent plot to the society road was allotted the additional land. By virtue of the said resolution the land adjacent to the appellants plot was allotted to the appellant. The said land allotted was admeasuring 166 sq. yrds. and accordingly the area of the plot came to be of 533 sq.yds. He has invited my attention to the various documentary evidence relied by the appellants in this behalf and stated that appellants are the lawful purchaser, occupier and user of the land in question who has all right to file proceedings and he needs to be heard before passing any order with regard to the land in question.

8.2 He further submitted that appellants states and submits that the society filed a suit in the year 1973 and the panchnama had been carried out in which the possession as well existence of wall has been shown. The said panchnama is carried out on 31.12.93. It is submitted that the suit filed by the society is dismissed on ground of jurisdiction. It is submitted that the Collector had passed an order dated 7.1.74 which was address to the society but the appellant was not heard before passing such order. In reply to the said order the society had given the reply dated 19.1.74 to the said notice of the Collector dated 7.1.74 stated that the land has been allotted to the plot holders and the said land does not cover the road area. It is submitted that as per the revised plan the land in question additionally allotted to the appellant were the part of the land allotted to the society. He submitted that in view of the aforesaid facts there was no question of passing for order dated 7.1.74 and 4.5.74 by the Collector. He submitted that the possession in the year 1973-74 is of the appellant. He submitted that all these evidence have not been considered and therefore the order of the district court requires consideration. He has also relied upon the judgment reported in 1999(7) SCC 89, 1995(2) GLR 974 and also judgment reported in 2002(2) SCC

9. Mr.P.K.Jani, learned advocate for the respondents submitted that this being a Second Appeal filed under Sec.100 of CPC, the appellants have not been able to prove that the Second Appeal raises substantial question of law and findings arrived at by the appellate Court is finding of fact and therefore this Court may not entertain the Second Appeal filed by the appellants in this behalf.

9.1 Learned advocate for the respondents submitted that it is an admitted position on record of the case that the portion of the land bearing Survey No.37 on which the appellants claim ownership right belonged to the Government- respondent No.1 herein and was never granted to anybody. It was further submitted that the plaintiffs-appellants are members of Sindhi Co-operative Housing Society and the land ad-measuring 26138 Sq.Yds. out of Survey No.37 was granted to the society for the purpose of constructing houses for its members by an order dated 13.11.1962 passed by the Collector, Mahesana. The society, thereafter, after getting the lay out plans for construction of houses for its members sanctioned by the Government, constructed houses on the said land. However, since the society wanted to construct a community centre/hall on a portion of the said land granted to it, it had submitted revised plans. The Collector, Mahesana by his order dated 9.11.72 sanctioned the revised plans subject to three conditions set out in the said order. Out of those three conditions, two conditions are relevant to the present purpose and, therefore, the said conditions is reproduced as under:

> "(2). No construction whatsoever shall be put up on the margin land of 20 feet which is permitted to be amalgamated in the plots and which forms part of a road of 20 feet.
>
> (3) If any dispute is raised by anybody in respect of the road for ingress and egress in this land, the decision taken in respect of this road by the Collector shall be binding to the society."

9.2 It was, therefore, submitted that while granting permission to construct the community hall, the Collector had stipulated a specific condition which clearly contemplated that no construction of whatsoever will be permitted to be put up on the margin land and that in

case of any dispute as to the right of way, the decision of the Collector in that behalf would be binding to the society.

9.3 It was further submitted that it is also an admitted position on record that after the Collector, Mahesana by his order dated 4.5.74 had directed that a strip of land having the width of 30 feet as demarcated in the map annexed to the said order which was being used as a road by the nearby societies shall vest in the Mehsana Municipality to enable it to lay a public road. The Collector, Mahesana also directed the Mamlatdar, Mahesana to hand over vacant and peaceful possession thereof to the respondent municipality. This strip of land was not granted to anybody thereafter and therefore nobody can lay a claim of any kind whatsoever over the said strip of land. Being aggrieved by the order of the Collector, the society challenged the said order by filing a suit in the Civil Court. However, the same came to be withdrawn with permission to file a fresh suit.

9.3(A) Learned advocate for the respondent has also invited my attention to the fact that before appellate court copy of Mahesana Collector's order dated 9.11.72 sanctioning revised plan cancelling the former plan sanctioned by order dated 30.11.62 at Exh.116 was produced before the appellate court. He has also invited my attention to the fact that original proceeding book containing resolutions from 1972 and resolution dated 17.1.75 at Exh.174 was also produced before the appellate court. After that he has invited my attention to the findings of the appellate court in which the appellate court has observed (internal page 27 in the judgment) actually present plaintiffs were never allotted any land, land was allotted to Sindhi Society and Sindhi Society was informed about the said order. Present plaintiffs had already given an undertaking vide Ex.175 to the society to the effect that they are agree to pay rate of 0.45 paise per strip for the land which is adjoining to their plots. But at later point of time, if there be any difficulty, then they will abide by the society's decision and they will never build anything on the said plot and they will never make a breach of the Collector's order.

9.4 It was further submitted that it is an admitted position on record that since then the suit land is in possession and has vested in the respondent Municipality. It is clearly established that the land in dispute never belonged to the appellants who are private individuals. In fact, it was the society of which the appellants are

members which had constructed the houses on the land granted to it by the Government. The society had applied to the Collector to permit it to amalgamate a strip of 20 feet width with its own land and such permission was granted by the Collector subject to the condition that the said strip of land shall be kept open. The order was passed by the Collector, Mahesana on 4.5.1974 and it is produced at Exh.144 on the record of the case.

9.5 It was further submitted that after the aforesaid order passed by the Collector dated 4.5.74, the society had passed a resolution at its general meeting held on 17.1.1975 which is produced at Exh.177 whereby it had decided to accept the order passed by the Collector and to hand over vacant and peaceful possession of the said strip of land to the respondent municipality. It is also pertinent to note that the appellants had attended the aforesaid general body meeting of the society which had passed the aforesaid resolution and had participated in the discussion that took place.

9.6 Thus the appellants having participated in the meeting of the society which passed the resolution at Exh.177, the appellants had no locus-standi to file the suit out of which the present Second Appeal arises.

9.7 It was further submitted that the learned District Judge in his well reasoned judgment has dealt with each and every aspect of the matter and having appreciated the voluminous documentary evidence adduced on the record of the case and having also appreciated the contentions raised on behalf of both the parties had allowed the appeal filed by the respondent State and set aside the decree passed by the learned trial Judge in the suit filed by the appellants.

9.8 It was therefore submitted that even though the Collector had passed the order vesting the land in question in the respondent municipality in the year 1974 and even though the appellants have no locus-standi to maintain the suit, the respondent municipality is not able to proceed with the work of widening the road in question on account of the pendency of the proceedings initiated by the appellants. The public at large is facing tremendous hardship and inconvenience as the vehicular traffic has multiplied during these 27 years and the road in question could not be widened on account of the operation of interim relief granted by the Courts.

9.9 It was further submitted that, as against the interest of general public at large, the interest of one or two individuals cannot be preferred and for the wrong

committed by any individual, the public at large cannot be made to suffer hardships. It was further submitted that the Hon'ble Supreme Court as well as High Courts have adopted a strict view of the encroachments made on public roads and public streets.

9.10 It was further submitted that it is also held by the learned District Judge that the order passed by the Collector in 1974 which is impugned in the present proceedings could have been challenged by the appellants by filing a revision application before the State Government. However, they had not exhausted the said remedy available to them under the provisions of the Land Revenue Code and, therefore, the suit was not maintainable. In view of the same, it was submitted that the Second Appeal filed by the appellants is not maintainable at law and same deserves to be dismissed in this behalf.

9.11 In support of the same, learned advocate for the respondent has relied upon the judgment of the Hon'ble Supreme Court in the case of VEERAYEE AMMAL VS. SEENI AMMAL REPORTED IN AIR 2001 SC 2920, the High Court in second appeal on appreciation of evidence cannot take a different view and assume jurisdiction by terming issue as substantial question of law. He has also relied upon another judgment of the Hon'ble Supreme Court in the case of MOHAN LAL VS. NIHAL SINGH REPORTED IN AIR 2001 SC 2942 the question of possession of suit land is essentially one of fact and finding of plaintiff's possession concurrently recorded by the Courts below cannot be interfered with in Second Appeal.

MY CONCLUSION :-

10. I have considered the submissions of the learned advocate for the appellants and the respondents in this behalf. I have also considered the civil application filed by the respondents for vacating interim relief and affidavit in supporting of the same. In my view the land on which the concerned appellants claim ownership right belonged to the Government. It was never granted to the plaintiffs by the Government. The plaintiffs are mere members of a society. The society had constructed houses on the land purchased by it. It had got the plans for construction of houses on the said land sanctioned by the Collector. The plans were approved by the Collector, Mahesana by his order dated 30.11.1962. However, since the society wanted to construct a community centre/hall, it had submitted revised plans and the Collector, Mahesana by his order dated 9.11.1972 approved the said

revised plans subject to the conditions which I have referred in this behalf. In my view the Collector had clearly stipulated the two conditions which I have set out in the earlier part of the judgment which clearly contemplated the construction whatsoever will be permitted to be put up and that in case of any dispute as to the right of way, the decision of the Collector in that behalf will be binding to the society.

10.1 In my view the appellants plaintiffs have no right over the strip of land on which compound wall was constructed in fact when the compound wall was constructed a condition was imposed in the order sanctioning the revised plan that the strip of land was required to be kept open to sky, the society had accepted the order passed by the Collector on 4.5.74 and also passed a resolution to that effect at a metting of its general body which was also attended by the appellants. The original order of grant of the land to Sindhi Soceity contemplated that the Collector shall resume any portion of the said land if required for the purpose of laying or widening a road without paying any compensation.

10.2 In my view, rules of natural justice namely nemo judex in causa sua and audi alteram partem have now a definite meaning and connotation in law, and their content and implications as well-understood and firmly established, they are nonetheless not statutory rules. Each of these rules yields to and changes with the exigencies of different situations. They do not apply in the same manner to situations which are not alike. These rules are not case in a rigid mould nor can they be put in a legal strait-jacket. They are not immutable but flexible. These rules can be adopted and modified in given situation. In my view, in view of the peculiar facts and circumtances of the case which I have narrated above the order passed by the Collector is proper, legal and valid and there is no violation of principle of natural justice.

10.3 In view of the aforesaid circumstances, the Collector's order dated 4.5.1974 directed that a strip of land having 30 feet width as demarcated in the map annexed to the said order shall vest in the municipality for the purpose of laying a public road and that the Mamlatdar, Mahesana, shall hand over vacant and peaceful possession thereof to the Municipality. In my view when the facts which are admitted and when the Collector is required to take prompt and urgent action in view of this peculiar facts and circumstances of the case the

Collector did not hear the Municipality before passing the order dated 4.5.74. In my view nothing unfair can be inferred by not affording an opportunity to present or meet a case by the plaintiff in connection with the order of the Collector dated 4.5.74 in view of the facts and circumstances of the case which I have narrated above.

11. In view of the same, the plaintiff has no right, title or interest in this behalf. In my view it is a fit case where the second appeal do not raises any substantial question of law and there is no violation of acquisition proceedings or rules of natural justice in passing the order of Collector in this behalf. In view of the fact that the society had accepted the order of the Collector, the plaintiffs cannot complaint about the violation of natural justice and to that extent the findings of the learned Judge is legal and valid.

11.(A) In my view the appellate court has not committed any error of law in holding that suit filed before the civil court without exhausting the remedy provided under the Land Revenue Code is barred by jurisdiction. The appellate court has not committed any error of law in holding that Collector can order land to be taken away from the plaintiffs and can order to be handed over to the Municipality as part of public street without acquiring the same in view of the facts and circumstances of the case which I have stated in the above paragraphs in this behalf.

12. I have also considered the submissions of the Municipality that because of this proceedings, the Municipality is not able to widening the road in question on account of the proceedings initiated by the plaintiffs. In my view, the public at large has been facing tremendous hardship for all these years and the road in question could not be widened on account of proceedings initiated by the plaintiff. I accept the arguments raised by the opponents-defendants and I do not accept any of the contentions raised by the learned advocate for the appellants-plaintiffs in this behalf as the plaintiff has no right, title or interest in this behalf. In view of the same, the second appeal is dismissed. Interim relief granted by this Court is vacated. In view of the same, the Civil Application is also disposed of accordingly.

(K.M. Mehta, J.)

After pronouncement of the judgment, learned advocate Mr.Mukesh Patel for the appellant states that

this Court may stay the operative order of this Court for a period of three weeks i.e. upto 14th August, 2002. In view of the same, this Order will not be implemented upto 14th August, 2002.

(K.M. Mehta, J.)

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